

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

-----In the Matter of-----)
)
PUBLIC UTILITIES COMMISSION)
)
Instituting a Proceeding Under)
Hawaii's Net Energy Metering)
Law, Hawaii Revised Statutes)
§§ 269-101 - 269-111, to)
Investigate Increasing: (1) the)
Maximum Capacity of Eligible)
Customer-Generators to More Than)
Fifty Kilowatts; and (2) the)
Total Rated Generating Capacity)
Produced by Eligible Customer-)
Generators to an Amount Above)
0.5 Percent of Peak Demand)
_____)

DOCKET NO. 2006-0084

DECISION AND ORDER NO. 24089

Filed March 13, 2008

At 2 o'clock P.M.

Karen Higashi
Chief Clerk of the Commission

ATTEST: A True Copy
KAREN HIGASHI
Chief Clerk, Public Utilities
Commission, State of Hawaii

Karen Higashi

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DIV. OF CONSUMER PROTECTION
PUBLIC UTILITIES DIVISION
COMMUNICATIONS SECTION
STATE OF HAWAII

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DECISION AND ORDER

By this Decision and Order, the commission:

(1) approves the stipulation filed by HAWAIIAN ELECTRIC COMPANY, INC. ("HECO"), HAWAII ELECTRIC LIGHT COMPANY, INC. ("HELCO"), MAUI ELECTRIC COMPANY, LIMITED ("MECO") (collectively, "HECO Companies"), the DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, DIVISION OF CONSUMER ADVOCACY ("Consumer Advocate"), HAWAII RENEWABLE ENERGY ALLIANCE ("HREA"), and HAWAII SOLAR ENERGY ASSOCIATION ("HSEA") on September 17, 2007 ("HECO Companies' Stipulation");¹ (2) approves the stipulation filed by KIUC, the Consumer Advocate, HREA, and HSEA on

¹The commission named, as original parties to this proceeding, the HECO Companies, KAUAI ISLAND UTILITY COOPERATIVE ("KIUC"), and the Consumer Advocate. The commission subsequently granted intervention to HREA and HSEA, and participation without intervention to ZERO EMISSIONS LEASING LLC ("Participant"). The original parties, as well as HREA and HSEA, are hereinafter referred to as the "Parties."

September 17, 2007 ("KIUC's Stipulation");² (3) declines to adopt, in whole or in part, the standard for net energy metering ("NEM") articulated in Section 111(d)(11) of the Public Utility Regulatory Policies Act of 1978 ("PURPA"), as amended by the Energy Policy Act of 2005 ("EPAct") (16 U.S.C. § 2621(d)(11)); and (4) denies the Motion for Further Involvement in Proceeding filed by Participant on September 24, 2007 ("Participant's Motion").

In addition, although the commission approves the Stipulations, it supplements the agreed-upon provisions therein by: (1) requiring the consideration of specific information relating to NEM in each utility's integrated resource planning ("IRP")³ process; (2) ordering that, in addition to each electric utility's IRP process, the evaluation of the economic impact of NEM shall also be considered in each electric utility's future rate case proceeding; and (3) initiating a NEM pilot program ("NEM Pilot Program"),⁴ to be designed by the HECO Companies and

²The HECO Companies' Stipulation and KIUC's Stipulation are jointly referred to herein as the "Stipulations."

³IRP is the planning process required of each electric utility in the State of Hawaii to systematically and thoroughly develop long-range plans for meeting Hawaii's future energy needs. As set forth in the commission's Framework for Integrated Resource Planning, the goal of IRP "is the identification of the resources or the mix of resources for meeting near and long term consumer energy needs in an efficient and reliable manner at the lowest reasonable cost." Decision and Order No. 11630, filed on May 22, 1992, in Docket No. 6617 ("IRP Framework"), Section II.A., at 3.

⁴The commission recognizes that it may be appropriate for the electric utilities to develop separate NEM Pilot Programs based on their own electric systems and individual circumstances with NEM. However, for ease of reference herein, the commission will generally refer to a singular "NEM Pilot Program."

KIUC and approved by the commission according to the parameters described herein, that will allow, on a trial basis, the use of a limited number of larger generating units (i.e., at least up to 500 kilowatts ("kW")) for NEM purposes. Proposals for a NEM Pilot Program shall be filed by the HECO Companies and KIUC within forty-five days of the date of this Decision and Order. The Parties and Participant may file comments on the proposals for a NEM Pilot Program within ten days of filing of the proposals.

I.

Background

A.

Net Energy Metering Law

Hawaii's Net Energy Metering Law, codified as Hawaii Revised Statutes ("HRS") §§ 269-101 to 269-111 ("Net Energy Metering Law"), which was enacted in 2001, allows residential and commercial customers of an electric utility (including a government entity) who own and operate eligible renewable energy generators to use "net energy metering" to measure electricity usage for billing purposes. As defined by HRS § 269-101, "net energy metering" means "measuring the difference between the electricity supplied through the electric grid and the electricity generated by an eligible customer-generator and fed back to the electric grid over a monthly billing period[.]" In essence, eligible customer-generators who

use net energy metering are billed only on the net kilowatt-hours of electricity they use.

The Net Energy Metering Law specifies that a customer's generating facility must be solar, wind, biomass, hydroelectric, or a hybrid system consisting of two or more of the foregoing types of facilities.⁵ The law further specifies that the maximum generating capacity per customer must be no more than fifty (50) kW.⁶ The law, however, expressly authorizes the commission to increase the maximum generating capacity for customers: "The eligible customer-generator shall have a capacity of not more than fifty kilowatts; provided that the public utilities commission may increase the maximum allowable capacity that eligible customer-generators may have to an amount greater than fifty kilowatts by rule or order."⁷

In addition, the Net Energy Metering Law provides a cap on the total power producing capacity of eligible customer-generators, which is currently set at 0.5 percent of an electric utility's peak demand.⁸ As with the maximum generating capacity of individual customers established in HRS § 269-101.5, the Net Energy Metering Law authorizes the commission to "increase, by rule or order, the total rated generating capacity produced by

⁵See HRS § 269-101.

⁶See HRS § 269-101.5.

⁷Act 99, 2004 Session Laws of Hawaii, which took effect on June 2, 2004, revised the Net Energy Metering Law by, among other things, increasing the size of facilities qualifying for NEM from 10 kW to 50 kW. See Act 99, 2004 Haw. Sess. Laws 392.

⁸See HRS §§ 269-102, 269-104.

eligible customer-generators to an amount above .5 per cent of the electric utility's system peak demand."⁹

B.

Initiation of this Docket

By Order No. 22380, filed on April 10, 2006, the commission initiated this investigation to determine whether, and to what extent, the commission should increase: (1) the maximum capacity of eligible customer-generators to more than 50 kW; and (2) the total rated generating capacity produced by eligible customer-generators to an amount above 0.5 percent of an electric utility's system peak demand, under Hawaii's Net Energy Metering Law. The commission named the HECO Companies, KIUC, and the Consumer Advocate as parties to this proceeding.

By Order No. 22535, filed on June 15, 2006, the commission granted intervention to HREA and HSEA, and participation without intervention to Participant.

C.

Issues

By Order No. 22884, filed on September 21, 2006, the commission approved, with modifications, the Stipulated Procedural Order filed by the Parties and Participant.

As set forth in Order No. 22884, the issues in this proceeding are:

⁹HRS § 269-102.

1. Should the maximum capacity for eligible consumer-generators established in HRS §§ 269-101.5 be increased to an amount above 50 kW, and if so, to what amount?
2. Should the total rated generating capacity produced by eligible consumer-generators established in HRS §§ 269-102 and 269-104 be increased to an amount above 0.5 percent of an electric utility's peak demand, and if so, to what amount?
3. Should the commission adopt, modify, or decline to adopt, in whole or part, the standard for net energy metering articulated in Section 111(d)(11) of PURPA, as amended by EAct (16 U.S.C. § 2621(d)(11)), including consideration of whether, and the extent to which, the EAct standard for net energy metering has already been met by Hawaii's Net Energy Metering Law (HRS §§ 269-101 to 269-111)?

D.

Stipulations

Preliminary statements of position were filed on February 15 and 16, 2007, and a technical meeting was held on April 27, 2007.

According to the HECO Companies, the Parties and Participant conducted a settlement meeting on July 16, 2007.¹⁰ As a result of their settlement discussions, on September 17, 2007, the Parties filed two separate settlement agreements, discussed below -- the HECO Companies' Stipulation and KIUC's Stipulation -- in lieu of statements of position.¹¹

¹⁰See HECO Companies' Stipulation, at 1.

¹¹The commission approved several requests by the Parties to extend the deadline for the filing of statements of position

HECO Companies' Stipulation

Regarding Issue Nos. 1 and 2, the parties to the HECO Companies' Stipulation agreed to increase: (1) the maximum size of eligible customer-generators from 50 kW to 100 kW; and (2) the system cap from 0.5% to 1.0% of system peak demand. In addition, the parties to the HECO Companies' Stipulation agreed to reserve 40% of the 1.0% system peak demand for small systems that have a NEM generator size of 10 kW or less, leaving 60% of the 1.0% system peak demand for systems with a NEM generator size of over 10 kW on HECO's grid. For the HELCO and MECO grids, the parties to the HECO Companies' Stipulation agreed to reserve 50% of the 1.0% system peak demand for small systems that have a NEM generator size of 10 kW or less, leaving 50% of the 1.0% system peak demand for systems with a NEM generator size of over 10 kW.

In support of these agreements, the parties to the HECO Companies' Stipulation state:

At this stage in the deployment of NEM facilities, the Parties believe that increasing the maximum size of the NEM generator from 50 kW to 100 kW, increasing the system cap from 0.5% to 1.0% of the system peak demand, and reserving a specified percentage of the system peak demand for smaller sized NEM generators (i.e., 10 kW or less), together provides a reasonable opportunity for larger sized NEM facilities to participate in the NEM program, while still making sure that residential and small commercial customers have the

(among other deadlines), from June 15, 2007 to September 17, 2007. Participant objected to the extensions and filed its statement of position on June 15, 2007.

opportunity to participate in the NEM program.¹²

In addition, the parties to the HECO Companies' Stipulation agreed that any future potential increases to the maximum size of eligible NEM generators and the system cap would be analyzed in each electric utility's IRP process. The key components of the parties' agreed-upon process for examining future NEM increases in IRP are summarized below:

- Any advisory group¹³ member can propose an increase to the NEM limits, but proposals to increase the NEM limits will be collectively addressed in the IRP process not more than once every calendar year. To propose an increase to the peak demand limit, the number of NEM installations on the utility system must be at least 75% of the current peak demand limit for that utility;
- As part of the IRP process, the utility company shall provide an annual report that identifies the progress of meeting the renewable portfolio standards ("RPS") set forth in HRS § 269-92,¹⁴ and how the utility is meeting the RPS requirements. As a part of this report, the utility shall include detailed

¹²HECO Companies' Stipulation, at 2.

¹³Pursuant to the IRP Framework, the utilities shall organize an advisory group comprised of representatives of public and private entities that are affected by the utility's integrated resource plan, to advise the utility in the development of the plan. See IRP Framework, Section III.E.1, at 13-14.

¹⁴Under Hawaii's RPS Law, codified as HRS §§ 269-91 - 269-95, RPS is defined as the percentage of electrical energy sales that is represented by renewable electrical energy. See HRS § 269-91. Each electric utility company that sells electricity for consumption in the State of Hawaii is required by law to meet the RPS of: (1) ten percent of its net electricity sales by December 31, 2010; (2) fifteen percent of its net electricity sales by December 31, 2015; and (3) twenty percent of its net electricity sales by December 31, 2020. See HRS § 269-92(a)(1)-(3).

information on the estimated amount of renewable energy provided through the NEM market, including the system sizes and total contribution as a percentage of the net peak of the system.

- During the process, participants who propose increases to the NEM limits should identify specific potential markets for NEM to enable the utility to perform an evaluation of the operational and cost impacts of the NEM systems on the utility system and on the utility's non-NEM customers.
- The utility will conduct an assessment of the impact of the proposed NEM limits on the reliability of the utility's system and other impacts. In addition, there shall be a cost benefit and cost effectiveness analysis to compare and weigh the various options and alternative mixes of options that include various integrated supply-side and demand-side management programs;
- NEM is to be evaluated as part of the program implementation schedule that is submitted in the utility's IRP;
- Because the IRP process is a public process, the advisory group members will have an opportunity to provide meaningful input into the potential market for NEM, including the appropriateness of the then existing NEM thresholds (i.e., size of units and percent of system peak);
- If the utility and advisory group members reach an agreement to change any of the existing thresholds, a request in the form of a stipulation between the utility and the Consumer Advocate will be filed with the commission. The stipulation will be subject to commission approval;
- If a member of the advisory group disagrees with the utility's assessment, the individual may file a separate petition outside of the IRP proceeding

to increase the NEM limits to the levels desired by the petitioner.¹⁵

With regard to Issue No. 3 concerning the NEM standard articulated in PURPA, the parties to the HECO Companies' Stipulation recommended that the commission decline to adopt this standard. In this regard, the parties to the HECO Companies' Stipulation maintain:

Hawaii already has a [NEM] law in Part VI of Chapter 269 of the [HRS]. That law contains extensive provisions and requirements for NEM systems and is specific to conditions in Hawaii. Thus, there is no need to adopt a separate set of federal standards which may be inconsistent with state law. At the same time, the state's NEM law provides the Commission with sufficient flexibility to modify requirements if the need arises.¹⁶

2.

KIUC's Stipulation

On Issue Nos. 1 and 2, the parties to KIUC's Stipulation agreed that: (1) the maximum size of KIUC's eligible customer-generators shall be 50 kW; and (2) KIUC's total rated generating capacity limit shall be increased from 0.5% to 1.0% of KIUC's peak demand. Further, the 1.0% of KIUC's peak demand shall be allocated as follows: (a) 50% will be allocated to systems whose size is 10 kW or smaller; and (b) the remaining 50% will be allocated to systems whose size is greater than 10 kW, but not greater than 50 kW.

Similar to the HECO Companies' Stipulation, the parties to KIUC's Stipulation agreed upon a mechanism, summarized below,

¹⁵See HECO Companies' Stipulation, at 3-5.

¹⁶Id. at 6.

by which KIUC's NEM limits will be regularly reviewed in its IRP process.

- KIUC will utilize a "NEM Industry Representative" who will be a sufficient "voice" of the NEM industry and an appropriate point of contact for the industry. This representative will provide required or requested NEM market and installation activity information in a utility-provided format and on a timely basis. KIUC will supplement this information with any other information or input it is able to obtain regarding the NEM industry;
- KIUC will select the NEM Industry Representative considering, among other factors, the individual's affiliation and experience with the NEM industry and whether KIUC believes the individual sufficiently represents the "voice" of the NEM trade community in IRP docket related issues. KIUC reserves the right to utilize more than one representative if it believes that a better representation of the NEM industry would result through the use of more than one representative;
- In the event there is a disagreement regarding the appropriateness of the person(s) to act as the NEM Industry Representative, the commission will select the NEM Industry Representative(s) who it believes best represents the "voice" of the NEM industry;
- The commission will review and approve KIUC's prescribed NEM limits, as follows:
 - i. In the event of a full IRP, KIUC's NEM limits would be one of the issues for determination as part of the IRP procedural process;
 - ii. For subsequent IRP updates, the commission's responsibility would be to review and respond to any comments, motions, or oppositions

submitted by an aggrieved party to KIUC's most recent full IRP docket at that time, which would remain open until KIUC's next IRP docket is opened, as well as to review and respond to any comments or complaints from any other person or entity that was not a party to the original docket, pursuant to its statutory powers and responsibilities;

- The responsibilities of the NEM Industry Representative include working with and obtaining information from the NEM industry and submitting a position to KIUC, and transmitting any comments or complaints involving KIUC's proposed NEM limits, together with any other information that the representative would want KIUC to consider in conducting its NEM analysis.¹⁷
- HSEA will initially be designated as the duly authorized NEM Industry Representative until further notified by HSEA. The NEM Industry Representative has the discretion to organize a NEM Industry Panel ("Panel"). If such a Panel is formed, KIUC shall receive information to be used in the evaluation of NEM limits from the Panel.
- KIUC's responsibilities include, among others:
 - i. Upon receipt of the information from the NEM Industry Representative, conduct an analysis based on the information provided and any other information deemed relevant by KIUC to determine whether an increase in its NEM limits is appropriate;

¹⁷KIUC's Stipulation states that KIUC believes that a representative of the NEM industry is in the best position to obtain and compile the information necessary about the industry to allow KIUC to have the most current and pertinent information before it in conducting its NEM analysis. See KIUC's Stipulation, at 4 n.10.

- ii. Include in IRP or annual IRP updates, as applicable, a report on the current status of NEM achievements, the results of KIUC's analysis, any recommended increases in the NEM limits, the methodology by which the analysis was performed, assumptions, and other relevant information that was utilized by KIUC in making its recommendation;
- iii. KIUC shall not be required to perform the annual NEM limit analysis if the information provided by the NEM Industry Representative is incomplete, untimely, or does not comport with KIUC's requirements for the type, extent, and format of the information required. However, if KIUC does not provide its annual analysis, KIUC shall still provide the current status of its NEM achievements, which shall include the number of NEM systems installed by rate class, the size of the individual systems, the date of the NEM agreement or effective date that the NEM rate commenced, the total installed NEM kW, and the percentage of utility peak achieved;

- The Consumer Advocate will have no additional responsibilities beyond those already set forth in the IRP Framework.¹⁸

Regarding Issue No. 3, KIUC stated that it agrees with the recommendation set forth in the HECO Companies' Stipulation -- namely, that the commission should decline to adopt the NEM standard in PURPA.¹⁹

¹⁸See id. at 3-5.

¹⁹Reply Statement of Position, filed by KIUC, on October 1, 2007, at 3. KIUC takes no position on the agreements reached on Issue Nos. 1 and 2 in the HECO Companies' Stipulation. See id. at 2. Likewise, the HECO Companies take no position on KIUC's

E.

Participant's Motion

On September 24, 2007, Participant filed a Motion for Further Involvement in Proceeding, which among other things, requested that the commission hold a hearing on the Stipulations. The HECO Companies and KIUC filed memoranda in opposition to Participant's Motion on October 3, 2007.

On October 1, 2007, KIUC filed its Reply Statement of Position, and the HECO Companies filed their Final Statement of Position.

In addition, by letter filed on October 1, 2007, the Parties requested that the commission cancel the panel hearing scheduled for the week of October 22, 2007, which would eliminate the need to hold the prehearing conference scheduled for October 15, 2007. By letter dated October 15, 2007, the commission approved the Parties' request to cancel the panel hearing and prehearing conference.²⁰

Stipulation. See Final Statement of Position, filed by the HECO Companies, on October 1, 2007, at 2.

²⁰In doing so, the commission noted Participant's objections to canceling the hearing, but found that Participant was granted limited participant status in the proceeding -- namely, the filing of a Preliminary Statement of Position, a Statement of Position, and a Reply or Final Statement of Position. Thus, the commission concluded that Participant was not entitled to a hearing over the Parties' waiver of a hearing. See Letter dated October 15, 2007, from the commission to the Parties and Participant, at 2.

II.

Discussion

A.

Stipulations

1.

NEM Limits

As set forth above, the parties to the HECO Companies' Stipulation agreed to increase: (1) the maximum size of eligible customer-generators from 50 kW to 100 kW; and (2) the system cap from 0.5% to 1.0% of system peak demand. In addition, the parties to the HECO Companies' Stipulation agreed to reserve 40% of the 1.0% system peak demand for small systems that have a NEM generator size of 10 kW or less, leaving 60% of the 1.0% system peak demand for systems with a NEM generator size of over 10 kW on HECO's grid. For the HELCO and MECO grids, the parties to the HECO Companies' Stipulation agreed to reserve 50% of the 1.0% system peak demand for small systems that have a NEM generator size of 10 kW or less, leaving 50% of the 1.0% system peak demand for systems with a NEM generator size of over 10 kW.

For KIUC, the parties to that Stipulation agreed that: (1) the maximum size of KIUC's eligible customer-generators shall be 50 kW; and (2) KIUC's total rated generating capacity limit shall be increased from 0.5% to 1.0% of KIUC's peak demand. Further, the 1.0% of KIUC's peak demand shall be allocated as follows: (a) 50% will be allocated to systems whose size is 10 kW or smaller; and (b) the remaining 50% will be allocated to

systems whose size is greater than 10 kW, but not greater than 50 kW.

Upon a full review of the entire record, the Parties' agreed-upon NEM limits set forth in the Stipulations appear reasonable. The 50 kW customer-generator size limit proposed for KIUC and the 100 kW customer-generator size limit proposed for the HECO Companies appear comparable to generator size limits implemented in other states. Moreover, the annual NEM Status Reports filed by the electric utilities indicate that the demand for NEM is approaching the existing 0.5% system peak threshold for some electric utilities, and therefore, it appears that an increase to the NEM system peak limit is merited. The commission finds that the proposed increase of the system peak demand limit to 1.0% for KIUC and the HECO Companies should allow for growth in NEM for a reasonable time period. This proposed limit is also within the range of limits adopted by other states.

In addition, the Parties' agreed-upon allocations of the system peak demand for larger sized NEM facilities and residential and small commercial customers appear fair and reasonable, and should ensure that both types of customers will be afforded the opportunity to participate in NEM.

For all of these reasons, but subject to certain supplemental requirements addressed below, the commission concludes that the Parties' agreed-upon NEM limits in the Stipulations are reasonable and should be approved. The HECO Companies and KIUC shall amend their NEM tariffs accordingly and file the amended tariffs within five days from

the date of this Decision and Order. The increases to the NEM limits approved herein shall take immediate effect upon filing of the amended tariffs.

2.

IRP Review Process

The key components of the Parties' agreed-upon processes in the Stipulations for examining future NEM increases in IRP are summarized above. Upon review, the commission agrees that the IRP process is a reasonable means to ensure a regular review of NEM limits. Accordingly, the commission approves the processes for NEM review, as set forth in the Stipulations. The commission finds, however, that additional review is necessary to establish a sound basis for future decisions regarding NEM.

In particular, in its evaluation of any future changes to NEM, the commission must consider the impact of such changes on the safety, power quality, and economics of the utility systems. For this reason, the commission directs the electric utilities to address in IRP, to the extent not already included in the terms of the Stipulations, matters such as: rate and revenue impacts of NEM; reliability, safety, and power quality issues; and the effects, if any, of changes to NEM on the utility's interconnection standards.

Moreover, to the extent that this type of information may not be sufficiently developed in the IRP process, and to supplement the information gathered in IRP, the commission

directs each electric utility to evaluate the economic effects of NEM in their future rate case proceedings to allow the commission to evaluate the total economic impact of NEM. Specifically, each electric utility shall submit testimony in each future rate case proceeding regarding the impact of NEM on the sales, revenues, rates, expenses, fuel consumption, and peak demand for the utility system. In addition, the utility shall include information on the projected fossil fuel savings and any under-recovery or cross-subsidization associated with NEM customers. Because a future test year is used for rate-making purposes, the utilities shall also identify and discuss the effects of any foreseeable changes to NEM within the applicable test year.

B.

NEM Pilot Program

Sections 269-101.5, 269-102, and 269-104, HRS, of the Net Energy Metering Law, authorize the commission to increase the NEM limits. Moreover, under HRS § 269-6, the commission "may consider the need for increased renewable energy use in exercising its authority and duties under [HRS Chapter 269]."²¹ By increasing the NEM limits, as set forth in the Stipulations, the use of renewable energy is encouraged, the consumption and demand for electricity is reduced, and ultimately Hawai'i's dependence on imported fossil fuels is decreased.

That being said, the commission is cognizant that with larger NEM generators, there may be issues related to reliability

²¹HRS § 269-6(b); see also HRS § 269-7 (commission's general investigative powers).

and power quality for other customers in the area. As a result, there may be a need for additional facilities or equipment to regulate power fluctuations in a localized area or to assure safety and reliability. In addition, the NEM Law, which requires crediting back excess NEM generation at full retail rates will result in reduced total kWh sales and revenues, but may not necessarily reduce the system peak or the necessary capital investment by the utility. As NEM penetration increases to a significant level, these factors may increase the rates for all customers, and require subsidies from non-NEM customers to cover the capital investments.

To allow the commission to consider the impact of incorporating more NEM generation, and facilitate future commission decisions concerning NEM, the commission finds it reasonable and appropriate to direct the electric utilities to institute a NEM Pilot Program.

The NEM Pilot Program shall be designed and proposed by the HECO Companies and KIUC, for the commission's review and approval, according to the following parameters:

- The NEM Pilot Program should evaluate the effects of further increasing the NEM unit size and system capacity limits beyond those that are established in this Decision and Order.
- The NEM Pilot Program shall be designed for a limited number of participants, with nominal generating unit sizes of at least 100 kW to 500 kW, while allowing for larger units (i.e., 500 kW+) if technically and economically reasonable and practicable;

- The NEM Pilot Program shall be designed to provide sufficient economic incentives to encourage participation, while identifying and implementing any safeguards necessary to assure the safety, reliability, and power quality of the utility system.
- The NEM Pilot Program shall be conducted outside the laws governing NEM, as set forth in the Net Energy Metering Law or commission order, unless and until the unit sizes in the NEM Pilot Program subsequently fall within the NEM size limits established by statute or commission order. As such, the utilities may propose additional interconnection or safety obligations for the NEM Pilot Program, and the generation from participants in the NEM Pilot Program will not be counted towards the threshold established in this docket of 1% of the utility's system peak demand. In addition, the utilities may propose an alternative rate structure for the NEM Pilot Program.
- The utilities may consider NEM standards and programs in other states that permit larger NEM units (i.e., 100 kW+).
- Each electric utility shall report on the status and results from the NEM Pilot Program in the annual NEM Status Reports currently filed with the commission. The reports shall address any relevant impacts related to the implementation of larger NEM units on the utility system through the NEM Pilot Program.

Proposals for a NEM Pilot Program shall be filed within forty-five days of the date of this Decision and Order. The Parties and Participant may file comments on the proposals for a NEM Pilot Program within ten days of filing of the proposals. After review of any comments by the Parties and

Participant, the commission will issue final approval of the NEM Pilot Program.

C.

NEM Standard Under PURPA

Sections 111(d)(11) and 112(b)(3)(A) of PURPA, as amended by EPAct, require the commission to commence consideration of the following matters governing net energy metering, no later than August 8, 2007:

Each electric utility shall make available upon request net metering service to any electric consumer that the electric utility serves. For purposes of this paragraph, the term 'net metering service' means service to an electric consumer under which electric energy generated by that electric consumer from an eligible on-site generating facility and delivered to the local distribution facilities may be used to offset electric energy provided by the electric utility to the electric consumer during the applicable billing period.

16 U.S.C. § 2621(d)(11); see also 16 U.S.C. § 2622(b)(3)(A).

As asserted by the Parties, Hawaii already has a Net Energy Metering Law, HRS §§ 269-101 - 269-111, which contains extensive provisions and requirements for the regulation of NEM in Hawaii. The Net Energy Metering Law also provides the commission with authority to increase the NEM limits, if necessary. There does not appear to be a need to adopt a separate standard for NEM under PURPA. Thus, the commission agrees with the recommendation of the Parties and declines to adopt or modify the standard for NEM under PURPA.

D.

Participant's Motion

On September 24, 2007, Participant filed its Motion, which among other things, requested that the commission hold a hearing on the Stipulations.²² In support of the Motion, and in opposition to the Stipulations, Participant asserted, in sum, the following:

- (1) the Proposed Processes²³ discourage the greater use of renewable energy by (a) giving the utilities a veto over future increases in the NEM Limits and by giving the utilities incentives to use that veto; (b) giving customer-generators effectively no rights under the Proposed Processes; (c) fragmenting the policy decision whether and by how much to increase the NEM Limits; and (d) creating obligatory delays of one year or more in making such decisions;
- (2) the Proposed Processes violate a customer-generator's constitutional rights to due process of law by denying a customer-generator's right to be heard by an unbiased decisionmaker;
- (3) the Commission lacks the authority to adopt the Proposed Processes;
- (4) the Proposed Processes raise issues beyond the scope of pertinent issues in this proceeding;
- (5) the Proposed Settlements were borne of a settlement process in which the interests of customer-generators were not represented;

²²Participant's Motion, at 2-3. By letter dated October 15, 2007, the commission notified the Parties and Participant of its decision to cancel the hearing in this docket. See supra note 20.

²³Participant's term "Proposed Processes" refers to the stipulating Parties' agreed-upon processes for reviewing NEM limits in each electric utility's IRP process.

- (6) NEM Limits greater than the Proposed 100 kW Limit, Proposed 50 kW Limit and Proposed 1% Limit (collectively, the "Proposed Limits") are now justified to advance the statutory purpose of NEM "to lessen Hawaii's dependence on imported oil by encouraging the greater use of renewable energy";
- (7) the Parties have failed to provide the Commission with information regarding the basis of the Proposed Limits; and
- (8) the Commission has no authority to discriminatorily apply the total capacity limit.²⁴

On October 3, 2007, the HECO Companies and KIUC filed oppositions to Participant's Motion. The HECO Companies argued, among other things, that Participant's request that the "facts and arguments" relating to the Stipulations in this docket be considered by the commission is unnecessary, since the procedural schedule in this docket allowed Participant the opportunity to file a final statement of position (to oppose the Stipulations) on October 1, 2007, but Participant did not do so. The HECO Companies also asserted that Participant's request could have been made earlier, because Participant was aware "in the May 2007 timeframe" that the Parties were discussing a general approach to examine NEM limits in the IRP process.²⁵ Similarly, the HECO Companies maintained that, allowing Participant further involvement in this late stage of the proceeding would create a disincentive to settlement:

²⁴Participant's Motion, at 4-5.

²⁵See Memorandum in Opposition to Zero Emissions Leasing LLC's Motion for Further Involvement in Proceeding, filed by the HECO Companies, on October 3, 2007, at 6.

The parties have already devoted significant time and resources to arrive at the agreements included in the settlement agreements. Allowing [Participant] to expand the scope of its involvement, after the settlement negotiations have been completed and the settlement agreements entered into, defeats one of the benefits of entering into settlement agreements -- eliminating some (or all) of the remaining procedural steps, including hearings.²⁶

Likewise, KIUC argued that Participant's Motion is unnecessary, inappropriate, and not authorized by the procedural schedule herein, since Participant could have filed a statement of position opposing the Stipulations on October 1, 2007, but did not do so. KIUC further contended that: (1) Participant could have timely moved for further involvement in this proceeding if it had "second thoughts" over its limited participant status in this docket, but chose not to do so; (2) "[a]llowing [Participant] to expand its participant status, as requested in its Motion and at such a late stage of this proceeding, would establish a bad precedent or policy by ultimately 'opening the floodgates' for disgruntled or dismayed participants who do not like a particular outcome proposed by the existing parties";²⁷ and (3) any further involvement by Participant at this late stage of the proceeding will unduly delay the proceeding since the Parties have already expended a considerable amount of time and resources in reaching a global settlement.²⁸

²⁶Id.

²⁷Memorandum in Opposition to Zero Emissions Leasing LLC's Motion for Further Involvement in Proceeding, filed by KIUC, on October 3, 2007, at 5.

²⁸See id. at 4-5.

Based on a full review of Participant's Motion and the oppositions filed thereto, the commission finds that, to allow Participant further involvement in this proceeding, would be unreasonable and prejudicial to the Parties. Participant's status in this docket was clearly limited to the filing of a Preliminary Statement of Position, a Statement of Position, and a Reply or Final Statement of Position.²⁹ Furthermore, the commission agrees with the HECO Companies and KIUC that Participant could have requested further involvement in this proceeding earlier, but did not; and that to allow Participant further involvement at this late stage in the proceeding, particularly after the Parties have negotiated settlements and resolved all issues in the proceeding, would unduly delay the proceeding and be unfair to the Parties. Accordingly, the commission concludes that Participant's Motion should be denied.

III.

Orders

THE COMMISSION ORDERS:

1. The HECO Companies' Stipulation, filed on September 17, 2007, and KIUC's Stipulation, filed on September 17, 2007, are approved.
2. The agreed-upon NEM limits and processes for NEM review in IRP, as set forth in the Stipulations, are approved,

²⁹See Order No. 22535, filed on June 15, 2006; see also Order No. 22884, filed on September 21, 2006, Exhibit A (Stipulated Regulatory Schedule), at 2.

subject to the commission's supplemental requirements addressed herein.

3. The HECO Companies and KIUC shall amend their NEM tariffs consistent with the terms of this Decision and Order and file the amended tariffs within five days from the date of this Decision and Order. The increases to the NEM limits approved herein shall take immediate effect upon filing of the amended tariffs.

4. In addition to the agreed-upon terms in the Stipulations, the commission orders that:

- (a) the electric utilities shall consider specific items relating to NEM, as discussed herein, in their respective IRP planning processes;
- (b) in addition to IRP, the economic effects of NEM shall be evaluated in the electric utilities' future rate case proceedings; and
- (c) the HECO Companies and KIUC shall design and propose a NEM Pilot Program for the commission's review and approval, according to the parameters described herein, that will allow, on a trial basis, the use of a limited number of larger generating units (i.e., at least 100 kw to 500 kW, and may allow for larger units) for NEM purposes. Stipulated proposals for a NEM Pilot Program shall be filed within forty-five days of the date of this Decision and Order. The Parties and Participant may file comments on the proposals for

a NEM Pilot Program within ten days of filing of the proposals.

5. The commission declines to adopt, in whole or in part, the NEM standard articulated in Section 111(d)(11) of PURPA, as amended by EAct.

6. Participant's Motion is denied.

DONE at Honolulu, Hawaii MAR 13 2008.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By Carlito P. Caliboso
Carlito P. Caliboso, Chairman

By John E. Cole
John E. Cole, Commissioner

APPROVED AS TO FORM:

By Leslie H. Kondo
Leslie H. Kondo, Commissioner

Kaiulani Kidani Shinsato
Kaiulani Kidani Shinsato
Commission Counsel

2006-0084.ah

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 24089 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

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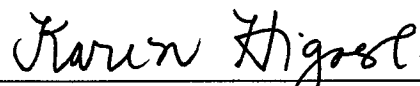
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DATED: MAR 13 2008